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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/614,669	07/12/2000	Bruce Ernest Tepper	8168	2159

27752 7590 08/29/2003

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER

SAUNDERS, DAVID A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 08/29/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

Applicant(s)

Examiner

TEPPER et al

Group/Art Unit

1674

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on 4/10/03 & 5/29/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1, 5-8, 10-11, 13-21 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 8, 14-16 is/are rejected.
- ☒ Claim(s) 5-7, 10-11, 13, 17-21 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/10/03 (paper 17) has been entered.

Following entry of the amendment of Paper 17, claims 1, 5 – 8, 10 –11 and 13-21 are pending and under examination.

The following corrections has been entered in the Office action mailed 2/19/03 (Paper 16): at page 2, penultimate line and at page 3, fifth line, changed "20" to –8--. This change has been entered in red ink and initialed and dated by the examiner.

Applicant's amendment of claims 1, 8 and 16 has overcome previously stated 112, second paragraph rejections.

Applicants amendment of claims 1 and 8 has overcome previously stated prior art rejections over Kapadia et al. and Fruehauf et al.

A new prior art rejection follows.

Claims 8 and 14-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fernstrom (Acta Derm. Venerol, 34 203, 1954) alone or in view of Halliday et al. (5,939,046).

Prior to a consideration of the reference teachings, it is to be noted that applicant's claims, read in light of the disclosure, are taken to be broad. It appears from page 7, lines 17-23 that the primary and secondary challenges can be administered

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concurrently simultaneously. Given this interpretation it is proper for the examiner to cite Fernstrom. Note also examiner's comments further infra.

Fernstrom shows a pressure patch test for demonstrating skin hypersensitivity to allergens. See Figures 1B and 1C. In such case the allergen solution imbibed in the patch, serves as a chemical challenge (allergens or "agents" tested are disclosed at page 208). The pressure created by the compression sponge, due to application of tape (Fig. 1C), serves as a physical challenge. It would be understood by anyone of skill that the resulting hypersensitive/allergic responses of the skin to the allergen would be evaluated visually. Holliday et al. are relied upon for teaching that it is conventional, and hence inherent or obvious, to evaluate such reactions by a "predefined scale;" see Table 1.

The pressure created by the tape placed over the sponge serves to enhance the hypersensitive/allergic response of skin to the allergen. That is, stronger responses of the skin were noted with the pressure patch versus the conventional patch, particularly at low allergen concentrations. Also the pressure patch test yields more positive responses, than does the conventional patch test, in patients known to be allergic. See pages 209-213. Thus all essential aspects of claim 1 are shown.

In the event that applicant does not consider that the primary and secondary challenges can be concurrent, then applicant should note that Fig. 1B shows application of the chemical challenge (allergen imbibed in patch) prior to application of the physical challenge (pressure due to compression of sponge by tape). Even if there is only a short time interval there between, it is to be noted that applicant's disclosure gives no

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qualitative or Quantitative definitions of any time interval that may separate the application of primary and secondary challenges.

From the above discussion it is clear that dependent claims 15 – 16 should be included in the rejection.

Dependent claim 14 is included because numerous allergen containing agents recited at page 208 (e.g. floor polish, soaps shampoos, creams, tooth pastes) contain “more than one component”.

Independent claim 8 is included because Fernstrom compared the results of this pressure patch test against the results of an art standard “routine patch test.” Since the latter lacks the pressure of the former, it serves as a “primary control” by virtue of lacking the second challenge (see definition at specification page 6, lines 16-17).

Applicant's arguments with respect to claims 1, 8 and 14-16 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Saunders, Ph.D whose telephone number is (703) 308-4718. The examiner can normally be reached on Monday - Thursday from 8:00 a.m. to 5:30 p.m. The examiner can also be reached on alternate Fridays

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached on (703) 308-3973. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

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Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the receptionist whose telephone number is (703) 308-0196.

D. Saunders: jmr  
August 20, 2003

*David A. Saunders*  
DAVID SAUNDERS  
PRIMARY EXAMINER  
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